

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BIENVENIDO I. LUGO MARCHANT,
Plaintiff,

v.

PETER TSICKRITZIS, KEVIN
KINGSTON and UNITED LIQUORS
LIMITED,
Defendants.

Civil Action No. 05 11317 NMG

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants, Peter Tsickritzis, Kevin Kingston, and United Liquors Limited ("UL") (collectively "Defendants"), move for summary judgment on the Complaint in its entirety pursuant to Fed. R. Civ. P. 56 on the ground that there are no material facts in dispute and they are entitled to judgment as a matter of law. In that Complaint alleging violations of Title VII (the Civil Rights of 1964) and the Americans with Disabilities Act, Plaintiff alleges a denial of his request for a religious accommodation and discrimination and harassment on the basis of race/color, disability, national origin and/or religion. Defendants move for summary judgment on all claims as there is no genuine issue of material fact in dispute and Plaintiff's claims fail as a matter of law.

In sum, UL is entitled to judgment on the religious accommodation claim because it either had no duty to accommodate and/or did accommodate and/or would have suffered an undue burden if it provided the accommodation Plaintiff sought. UL is entitled to judgment on the claim of discrimination because it had a legitimate business reason for its decision to use Plaintiff in the warehouse and Plaintiff cannot establish pretext. UL is entitled to judgment on the harassment claims because Plaintiff cannot show severe or pervasive conduct and on the

remaining claim because Plaintiff failed to exhaust administrative remedies. The individual defendants are entitled to judgment because there is no individual liability under Title VII or the ADA.

In support of their motion, Defendants submit their Rule 56.1 Statement of Material Facts Not In Dispute, Declarations of Kevin Kingston, Peter Tsickritzis, William Nagle, and Joan Ackerstein and their supporting memorandum.

LOCAL RULE 7.1(A)(2) CERTIFICATION

Counsel for Defendants, Heather Stepler, hereby certifies that she conferred with Plaintiff about this motion on February 6, 2007, who advised he would oppose it.

Respectfully submitted,

UNITED LIQUORS LIMITED, PETER
TSICKRITZIS and KEVIN KINGSTON,

/s/ Joan Ackerstein

Joan Ackerstein (BBO# 348220)

Heather Stepler (BBO# 654269)

JACKSON LEWIS LLP

75 Park Plaza, 4th Floor

Boston, Massachusetts 02116

(617) 367-0025; Fax: (617) 367-2155

Dated: February 7, 2007

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2007, this document was served upon Plaintiff, Bienvenido I. Lugo Marchant, 19 Grove Street, Brockton, MA 02301, by first class mail, postage prepaid.

/s/ Heather L. Stepler
Jackson Lewis LLP